

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

WESTERN WALL SYSTEMS, LLC
Employer

and

Case 28-RC-247464

OPERATIVE PLASTERERS AND CEMENT
MASONS LOCAL 797
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision on Objections and Certification of Representative is denied as it raises no substantial issues warranting review.¹

JOHN F. RING, CHAIRMAN

MARVIN E. KAPLAN, MEMBER

WILLIAM J. EMANUEL, MEMBER

Dated, Washington, D.C., April 16, 2020.

¹ We note that the Employer's Request for Review, which was prepared by its counsel, contains factual assertions in support of each of its objections that the Employer, through the same counsel, did not raise before the Regional Director. Thus, these assertions are not properly before the Board. See Board Rules and Regulations, Sec. 102.67(e). But, even if they were, we would still conclude that the Regional Director did not err in overruling these objections without a hearing because, even presuming the truth of the Employer's proffered evidence and contentions, it has failed to establish a *prima facie* case in support of its objections. See, e.g., *Park Chevrolet-Geo*, 308 NLRB 1010, 1010 fn. 1 (1992).

Regarding the Employer's objections pertaining to the timing of the election, we express no view with respect to whether we agree or disagree with revisions made by the Board's 2014 Election Rule but agree that it applies here and warrants denial of the Employer's Request for Review. We observe, however, that the Board recently issued a final rule, which amends the Board's Rules and Regulations to, *inter alia*, lengthen many of the timelines set forth in the 2014 Election Rule. See 84 Fed. Reg. 69524 (Dec. 18, 2019). Those amendments are not effective until May 31, 2020, however. 85 Fed. Reg. 17500 (Mar. 30, 2020).

We find, consistent with extant Board precedent, that the Regional Director did not abuse his discretion by approving the parties' stipulated election agreement on a mixed mail and manual ballot election in which out-of-state employees were to vote by mail ballot. In our view, however, this is yet another case that reveals the many potential problems inherent in mail ballot elections. The Board is therefore open to addressing the criteria for mail balloting in a future appropriate proceeding.